

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOCKHEED MARTIN TRANSPORTATION
SECURITY SOLUTIONS, AN OPERATING UNIT
OF LOCKHEED MARTIN CORPORATION,

Plaintiff,

-against-

MTA CAPITAL CONSTRUCTION COMPANY and
METROPOLITAN TRANSPORTATION
AUTHORITY,

Defendants.

No. 09 CV 4077 (PGG)(GWG)

**SECOND DECLARATION
OF IRA J. LIPTON
IN OPPOSITION TO
THE SURETIES'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, FEDERAL INSURANCE
COMPANY, and SAFECO INSURANCE COMPANY
OF AMERICA,

Plaintiffs,

-against-

METROPOLITAN TRANSPORTATION
AUTHORITY, MTA CAPITAL CONSTRUCTION
COMPANY, NEW YORK CITY TRANSIT
AUTHORITY, and LOCKHEED MARTIN
CORPORATION,

Defendants.

No. 09 CV 6033 (PGG)(GWG)

Ira J. Lipton, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury that
the following is true and correct:

1. I am a Partner of the firm Hoguet Newman Regal & Kenney LLP, attorneys for Defendants Metropolitan Transportation Authority (“MTA”) and MTA Capital Construction Company (“MTACC”) (collectively, “Defendants”) in this action.

2. I respectfully submit this Declaration in opposition to the Sureties’ motion for partial summary judgment.

3. MTA requested that the Sureties perform their obligations under the Bond on June 12, 2009. *See* Ex. S2 (6/12/09 Letter from Pezik to Sureties).

4. Despite MTA’s request pursuant to the terms of the Bond that the Sureties commence work of completion, the Sureties did not commence the work of completion within twenty (20) days of MTA’s written notice to do so.

5. Additionally, the Sureties did not notify the MTA that it should not make any additional payments to Lockheed; nor, did the Sureties direct the MTA to make any payments to the Sureties.

6. The Sureties did not advise the MTA that it would impair the Sureties’ interest in the collateral by making payments to Lockheed prior to the MTA’s June, 2009 payment to Lockheed.

7. To date, the Sureties have not performed under the Bond.

8. The Sureties have at all times maintained that they have no obligations to the MTA under the Bond.

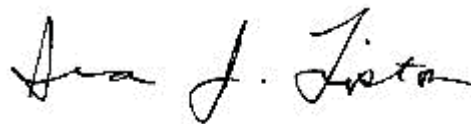
9. The only action taken by the Sureties in response to the MTA’s request that the Sureties commence the work of completion was to allegedly investigate the Sureties’ obligations under the Bond.

10. The Sureties have not performed any work on the Project, provided funding to the MTA for completion of the work or advised the MTA that they would reimburse the MTA for costs incurred by the MTA which are in excess of the Contract price in performing the remaining work on the Project.

11. At no time after the MTA advised the Sureties that the MTA believed Lockheed to be in default of its obligations under the Contract, did the Sureties notify the MTA that it should not make any additional payments to Lockheed; nor, did the Sureties direct the MTA to make any payments to the Sureties.

12. The Sureties did not advise the MTA that any further payments to Lockheed would impair the Sureties' interest in any "potential" collateral.

Dated: New York, New York
September 10, 2013

A handwritten signature in black ink, appearing to read "Ira J. Lipton", written over a horizontal line.

Ira J. Lipton